

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

CALVIN C. CALDWELL, JR.,	)	CASE NO. 1:15 CV 744
	)	
Plaintiff,	)	JUDGE JAMES G. CARR
	)	
v.	)	MAGISTRATE JUDGE
	)	WILLIAM H. BAUGHMAN, JR.
AL LAZAROFF, WARDEN,	)	
	)	<b><u>REPORT &amp; RECOMMENDATION</u></b>
Defendant.	)	

Before me on referral<sup>1</sup> in this matter of Calvin C. Caldwell, Jr.'s *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254<sup>2</sup> is Caldwell's motion for an evidentiary hearing and for summary judgment.<sup>3</sup> The State has responded in opposition.<sup>4</sup> For the following reasons I will recommend that both motions be denied.

First, as to the motion for an evidentiary hearing, the State correctly observes that where a habeas claim has been adjudicated on the merits by the state court, habeas review in the federal court is limited to the record that was before the state court when it addressed that claim.<sup>5</sup> Here, without now rendering a final recommendation as to the disposition of the

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<sup>1</sup>The matter has been referred to me under Local Rule 72.2 by United States District Judge James G. Carr in a non-document order entered June 25, 2015.

<sup>2</sup>ECF # 1.

<sup>3</sup>ECF # 27.

<sup>4</sup>ECF # 28.

<sup>5</sup>*Cullen v. Pinholster*, 563 U.S. 170, 185 (2011).

petition, it is plain from a review of the petition and the return of the writ that Caldwell's three grounds for relief are intertwined issues arising from the testimony of a confidential informant at trial. As the State points out, while there are questions regarding whether Caldwell fairly presented these issues to the Ohio court as federal claims, and additional questions as to whether a federal habeas court is precluded from reaching the claims due to a procedural default based on the lack of contemporary objections at trial and/or the non-cognizability of the claims as matters of state law, there is no question that the Ohio court fully dealt with the claims as presented, and that resolution of the fair presentment, procedural default or non-cognizability arguments do not involve the need for any new evidence.

Consequently, I recommend that the motion for an evidentiary hearing be denied.

Further, as to the motion for summary judgment, I note that the State has only recently filed its return of the writ and the state court record. As such, Caldwell's petition is only now ready for adjudication by the federal habeas court. In such a situation, I recommend that Caldwell's motion for summary judgment be denied now without prejudice to the ultimate resolution of the petition in regular order.

Dated: February 8, 2016

s/ William H. Baughman, Jr.  
United States Magistrate Judge